

**TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING**

**APPROVED
AUGUST 20, 2015**

Council Chambers

Meeting called to order: 6:01 p.m.

Board members present: Chair Ann Grinnell, Vice Chair Karen Kalmar, Robert Harris, Secretary Debbie Driscoll-Davis and Mark Alesse.

Members absent: David Lincoln and Deborah Lynch

Staff present: Chris Di Matteo, Town Planner.

Pledge of Allegiance

Minutes: July 23, 2015

Ms. Kalmar moved to approve the minutes of July 23, 2015 as written.

Ms. Driscoll-Davis seconded.

Motion carried: 5-0-0

Public Comment: Ms. Grinnell provided an opportunity for public comment. Hearing none, Ms. Grinnell closed public comment.

ITEM 1 – Hampton Inn and Suites – Preliminary/Final Site Plan Review

Action: hold a public hearing, approve or deny preliminary/final site plan. Owner Kittery Trading Post Shops, LLC and applicant 275 US Route 1, LLC request consideration of a site plan for redevelopment of 4.12 acres, consisting of an 83-room hotel, located at 275 US Route 1 (Tax Map 30, Lot 41) in the Commercial - 1 (C-1) and Resource Protection Overlay (OZ-RP) Zones. Agent is Ryan Plummer, Two International Group.

Ms. Desirea Falt, an architect from BMA Architectural Group, gave a presentation to the Board which included the following points:

- The project includes an 83 guest room hotel to be built on the 4.12 acre site on the existing Dansk Square shopping center.
- The new construction, of the hotel only, will occur on half of the site. The rest will remain undeveloped.
- The majority of the exterior of the building will now be clapboard siding with a brick base. Only the parapets, which have gone down 3 feet in size, and the bump out areas will be EIFS (Exterior Insulation Finishing System). The materials on the building have been transitioned with cornice caps and returns. The building will have a height of 40 feet.
- A traffic analysis was done and it was determined that there would be a reduction in traffic when the building is full with the exception that a.m. peak trips increase by 34 additional trips.
- It was determined by the DEP that the project would qualify for a storm water permit by rule.
- There will be 89 parking spaces, which meets requirements, and two paths into the building leading off from Old Wilson Road. The landscaping will include a variety of trees, shrubs and ground cover.

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- The parking lot will be lit with two signs on the building, one on the front of the building facing Route 1 and one on the back of the building facing I-95, both internally illuminated, and one free standing sign.
- All utilities will be underground and they have letters for sewer and water that the capacity has been met and the services can be provided.
- Every six to seven years the hotel has to be renovated, both interior and exterior, so the structure will never become dilapidated. She added that it is also going to be built of all non-combustible materials and there are fire sprinklers throughout the building.
- The sloped roof is not practicable in this case for four reasons:
 - The mechanical space must be located on the roof and a high attic creates a fire safety concern when trying to access the space and maintenance access to the roof creates less of a safety hazard with a flat roof;
 - Snowfall and snow removal create safety issues with a sloped roof. They would have to add stops to the roof so the snow does not fall off and it would have to be unloaded manually;
 - A flat roof allows for parapets on the building which help to break up the horizontal configuration and;
 - A sloped roof increases the overall height to a point where it is above regulation height.
- They request that the Board deem the use of a sloped roof to be not practicable.
- Mr. Alesse asked what material would be used for the clapboards and Ms. Falt responded that it would be hardy board so you do not have to worry about the painting issue of it.
- Durward Parkinson, legal counsel for the project, came to the podium to discuss the pitched roof issue. He noted that the roof must be pitched at 412 unless it is deemed not practicable. He defined the word practicable and noted that a pitched roof could not be done successfully in this case and asked the Board to use their discretion to determine whether it is necessary or not. He stated that this would not be setting a precedent and that there is no such thing as a precedent for the Planning Board.
- Ms. Falt added that a flat roof would be safer in the case of a fire because there are no concealed spaces and attic access would be easier as well.
- The project complies with all of the Town's ordinances.
- There is a demand in Kittery for a quality hotel with modern amenities. This hotel would service mall guests and other visitors.

Ms. Grinnell opened the public hearing.

Suzanne Johnson, Cromwell Street resident

- Ms. Johnson welcomes the hotel's ideas but would like to stop the destruction of the native tall pine trees. The native pine trees are abundant in that area and she does not want the hotel to cut them down just for visibility purposes.
- Hampton Inn is known for its drab or nonexistent landscaping unlike other Hilton Hotels. She added that the roots of the trees keep the soil intact and help to control water flow.
- Ms. Johnson asked that they should not be part of the global assault on the birds, poisoning the birds so they do not destruct the structure. She commented that birds would enhance the beauty of the hotel and they could set a precedent by establishing a bird sanctuary on the premises.

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- She asked that the hotel share their profits with the Town by offering to help to pay for free trash pick-up for those who cannot afford it.

George Dow, Bartlett Road resident and chair of the Economic Development Committee

- Mr. Dow thanked the Hotel for bringing their business to Kittery.
- He noted that the site offers an opportunity for business growth in the area and makes Kittery a destination site and not a pass through.
- He added that the group has taken every effort to listen to the Planning Board.
- He asked that people keep in mind that the Hotel would need to offer competitive rates to remain profitable.

Ann H. Peters, Ox Point Drive resident

- Ms. Peters is against the proposed development.
- The hotel is not in compliance with the code for height restriction or the sloped roof requirement which she believes is because they want to use their own design.
- Ms. Peters is concerned with traffic safety in the area, especially traffic coming off the exit ramp heading north. With already heavy traffic, a left turn into the hotel would be difficult.
- The trip survey is compared to when the site was a retail use which was a long time ago and traffic in the area has increased since then.
- The site would have an impact on Chickering Creek which has heavy water flow at times. Contaminants would be washed into the creek and the Spruce Creek water shed.
- She would like them to keep the existing trees and buffers.

Tom Emerson, Ox Point Drive resident

- Mr. Emerson agrees that traffic in that area is heavy but thinks that having a viable use on the property will improve the chances of getting the traffic there controlled.
- Kittery has a history of hotels some of which on Kittery Point have been higher than this one.
- Contemporary hotels do not have sloped roofs and older hotels with sloped roofs have porches to mitigate snowfall.
- Mr. Emerson agrees with the location of the hotel and likes that it is near Old Wilson Road.
- He added that the clapboards are a good effort to make the hotel look coastal within a fairly rigid branding scheme.

Earldean Wells, Chair of the Conservation Committee

- Six years ago, Kittery was awarded a 319 grant, which is in its 4th phase now, to address the health of Spruce Creek
- She asked that if the Board chooses a less strict storm water plan, they set a condition of approval that any further construction would bring a more effective storm water plan into place.
- Ms. Wells requested that the phrase “manmade ditch” be removed from the plan as they are functioning as wetlands.
- She noted that they are required to have a snow storage and removal note on the final plan.

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Gay Lakin, Ox Point Drive resident

- Ms. Lakin agrees with the information that Rich Balano emailed to the Board.
- She would like to see a buffer on the plans and does not want any trees cut down. She noted that cutting down trees increases noise levels.

Howard Patten, Spencers Way resident

- Mr. Patten thinks the project is a great idea and agrees with Mr. Dow on all of his points.

Ms. Grinnell closed public hearing.

Mr. DiMatteo read correspondence received from the following people or associations aloud:

- Timothy and Alison Wells, Kelsey Lane residents, who strongly support the new hotel.
- Mari O'Neil, of The Kittery Outlet Association, who is in support of the proposed hotel and the increased business that the guests would bring.
- Gay Lakin, Ox Point Drive resident who has concerns about the design of the hotel and its environmental impacts.
- Rich Balano, Ox Point Drive resident, who has concerns about the design of the project not meeting Kittery code, specifically the sloped roof and building height.

Ms. Kalmar noted that the height of a flat roof building is measured from the ground to the roof beams and anything that does not have floor space above that does not count towards the 40 feet. She then read Mr. Lincoln's comments aloud which included the following points:

- Roof design: the proposed "flat iron" roof design is in conflict or violation of Kittery code which states that building design should reflect the characteristics of Kittery's buildings and New England primary architectural styles.
- Access to Route 1: the consultant which generated the July 6, 2015 Trip Generation Analysis was not familiar with the site, using secondary data and incorrect guidelines of retail traffic activity to generate the current traffic estimate. The proposed entrance and exit of the proposed hotel would be a safety hazard.
- Street signage: does the proposed signage, on the building and on the street, meet the code?
- Future additions: maps and editorial by the developer reference "future" additions to the lot including a restaurant and a coffee shop with the proposed location of each shown on various plans.

Mr. Jacques Gagnon, Oak Point Associates, approached the podium to answer questions from the Board.

Ms. Grinnell asked if the application at hand was for just the hotel or for the other buildings as well and Mr. Gagnon responded that it was for just the hotel at this time. Ms. Driscoll-Davis asked about the heights listed in the proposal of 151ft, 147ft and 143ft and why they were so high. Mr. DiMatteo responded that you would subtract 100 from the numbers since the grade is 100 and is considered to be a constant.

Mr. Alesse expressed concern over the appearance of the building. He commented that the added clapboards are appreciated but the building still does not have a New England look to it. He suggested

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that the parapets be turned into gable end parapets and a cupola be added to the top. He does not want the hotel to look like a cookie cutter Hampton Inn. He added that although the hotel would add more value to the Town, the hotel needs Kittery more than Kittery needs the hotel so they should make an effort to be in the Town.

Ms. Kalmar asked about the traffic concerns in the area and noted that she was confused as to where the data had come from. Mr. Gagnon responded they did a trip generation analysis based on the existing use that is there, which on the tax cards is listed as a shopping mall, and looked at the number of trips generated and the time of day the trips were generated. He added that on weekdays there was a reduction of 130 trips and a reduction of almost 500 trips on Saturday. He noted that during peak hour when the stores are not open the trips would generate approximately 34 more trips but that they would not require a traffic movement permit from the MaineDOT. Ms. Driscoll-Davis commented that the traffic study is using old data and Ms. Kalmar responded that they are referring to a generic number of trips based on the square footage of the zoned retail use. Ms. Driscoll-Davis noted that their summary leads people to believe that the traffic will decrease. Ms. Kalmar responded that the original development was approved to go on route one and it did generate more traffic. This project will generate more traffic than the current use but not more than a fully functional retail building.

Ms. Grinnell asked if all of the signs are within Kittery's code and Ms. Falt responded that they are. Ms. Grinnell noted that in the plan that there is no sidewalk that connects the front parking lot to the back and added that she would like to connect the hotel to the malls so people would walk instead of drive. She asked if they would consider connecting the parking lot on the south side around to the back of the building and painting a crosswalk. Ms. Falt stated that they would do that.

Ms. Kalmar noted that she would like to see a higher standard of storm water management. She added that the Town has spent an enormous amount of time and effort mitigating Spruce Creek. Ms. Grinnell asked if the reserved buffer area would be on the plan if it is removed and if they are planning to cut down any of the tall pine trees. Mr. Gagnon responded that mostly all of the buffer is on the state right of way and that they would not be cutting down any trees on the site. Ms. Driscoll-Davis asked who would replace the buffer if the state buffer is removed. Mr. Gagnon stated that they could make that a condition of approval that the owner or applicant submit a plan for approval to replant the buffer.

Ms. Driscoll-Davis asked if they would remove the section about possible future development since it is not being approved at this time. Mr. DiMatteo responded that leaving it in makes their future intentions clear. Ms. Driscoll-Davis stated that it is important for the applicant to know that the Planning Board is not currently 100% on board with the future plans of the site. Mr. Parkinson added that the Planning Board could put that in their findings of fact. Ms. Kalmar noted that in the current draft of the findings of fact it states that all future development requires Board approval.

Ms. Grinnell asked if they would consider removing the words "manmade ditch". Mr. Gagnon said that they had no issues with that and that they just used the terminology to differentiate between a stream since manmade wetlands are treated differently. He said that they will take out the words "manmade ditch" and it will remain delineated as a wetland.

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Ms. Driscoll-Davis asked if the hotel would consider adding a bike rack, to which they answered yes, and if the pool could be open to residents, to which they responded no. Ms. Driscoll-Davis asked if they would consider making the sewer pumping station look better. It was decided that the Board would discuss that with the sewer department first. Mr. Alesse asked if they would consider changing the parapets and if so, could he see a drawing of what they would look like. Ms. Falt requested a poll of the Board's current stand on the project before they answer any more questions.

Ms. Kalmar stated that she believes that the design is compatible with the federal style of architecture and that the Board is allowed to determine whether a flat roof is practicable, which is defined in the code book, or not if there are concerns of danger or negative impacts. She added that a sloped roof increases danger to guests of the hotel and that a flat roof is safer. Mr. Harris commented that there are other ways to get around the proposed area during times of heavy traffic and that he is happy with the process and has no building or traffic concerns. Ms. Driscoll-Davis commented that there are a lot of bicyclists that come through Kittery and she would like the hotel to accommodate them. She added that she agrees with Karen of an acceptable way to handle the roof situation and she appreciates the clapboards. Mr. Alesse would like to see the false front changed to a pitched roof and noted that people in the Town have concerns with aesthetics. He is all set with the other aspects of the application. Ms. Grinnell noted that she would like the higher standards used for Spruce Creek.

Mr. Gagnon commented that he understands that Ms. Grinnell would like to see better storm water treatment but that development is tight and they would like to know more about the extent of the process and the standards. He added that they have already met DEP requirements and the project has been deemed as a reduction in the pollution load. They also believe that it will help the water quality. He also noted that they will replant the 100 foot grass buffer strip. Ms. Kalmar commented that having the best practices in place is getting ahead of the curve.

Mr. Gagnon added that the next phase of development has a lot of treatment built into it. Mr. Parkinson noted that they could make that a condition of approval. Ms. Driscoll-Davis asked if they had snow storage and dumpsters and Mr. Gagnon responded that there is designated snow storage throughout the site, marked as ovals on the plan, and they also have dumpster enclosures. Ms. Driscoll-Davis then commented that she would like them to add a buffer and not just put one up if the State takes theirs down. Mr. Parkinson noted that they could possibly get an easement from the State to add a buffer to State land and that could also be a condition of approval. He added that if they could not get permission from the State they could put the buffer in on reserved land right now and not wait until the next phase. Ms. Wells remarked that she would like the ovals on the plan for the dumpsters to be clearly marked.

Ms. Grinnell asked if they would be adding the additional sidewalk and crosswalk and Ms. Falt responded that they would like that to be a condition of approval. Mr. Alesse asked if they would answer his questions about the design. Ms. Falt responded that according the design code, they cannot create fake gables; the gables would have to be a part of the roof and with a federal flat roof style the cornices are extended back.

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**Ms. Kalmar moved to waive the review of the York County Soil and Water Conservation District.
Ms. Driscoll-Davis Seconded.
Motion Carried: 5-0-0.**

Ms. Kalmar moved to grant conditional preliminary and final approval for the site plan application dated June 18, 2015 with subsequent revisions from owner Kittery Trading Post Shops, LLC, and applicant Two International Group for redevelopment of 4.12 acres consisting of an 83-room hotel located at 275 US Route 1, Tax Map 30, Lot 41 in the Commercial 1 (C-1) and Resource Protection Overlay (OZ-RP) Zones.

**Mr. Harris seconded.
Motion carried: 5-0-0.**

**FINDINGS OF FACT
Hampton Inn and Suites Site Plan**

{As presented in the plan review notes dated 8/20/2015 and amended by the Board}

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: Owner Kittery Trading Post Shops, LLC and applicant 275 US Route 1, LLC requested approval of a site plan for redevelopment of 4.12 acres, consisting of an 83-room hotel, located at 275 US Route 1 (Tax Map 30, Lot 41) in the Commercial - 1 (C-1) and Resource Protection Overlay (OZ-RP) Zones. Agent is Ryan Plummer, Two International Group.
Hereinafter the “Development,”

And pursuant to the Plan Review meetings conducted by the Planning Board as noted; *{in the Plan Review Notes prepared for 8/20/2015}*

Preliminary Plan Application	Accepted	7/9/2015
Site Walk	Not Held	
Public Hearing	Held	8/20/2015
Preliminary / Final Plan Review	Held, approved with conditions	8/20/2015

And pursuant to the application, plans and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following; *{ as noted in the Plan Review Notes prepared for 8/20/2015}* (hereinafter the “Plan”):

1. Sketch Plan and application
2. Preliminary Plan Application submittal book June 18, 2015
3. G-001 – Title, Map, Notes, List of Drawings, Rev. July 23, 2015
4. SV101 – Boundary and Existing Conditions, Rev. July 23, 2015
5. CD101 – Removals Plan Rev. July 23, 2015

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6. CS101 – Site Plan / Layout Plan,
7. CU101 – Utility Plan,
8. CG101 – Grading Plan,
9. C-501 – Erosion Control Notes
10. C-502 – Erosion Control Notes
11. C-503 – Site Details
12. L-101 – Landscape Plan
13. L-501 – Landscape Details
14. A-101thru 103 – Floor Plan
15. A-201thru 202 – Exterior Elevations
16. Trip Generation Analysis, Maine Traffic Resources
17. Post Construction Stormwater Management Plan
18. Lighting Photometric Plan and fixture information
19. Color Site Plan rendering with future build-out

Rev. July 23, 2015
Rev. July 23, 2015
Rev. July 23, 2015
Rev. July 23, 2015
Rev. July 23, 2015
Rev. June 16, 2015
Rev. July 23, 2015
Rev. July 23, 2015
Rev. July 23, 2015
Rev. July 23, 2015

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by section **16.10.8.3.4** and as recorded below:

FINDINGS OF FACT

Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this Code, and which certify the development meets the following requirements:

A. Development Conforms to Local Ordinances.

The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

Findings: The proposed four story, 83 room hotel is a permitted use in the Commercial-1 (C-1) Zone and the Board found the sloped roof was not practicable as demonstrated by the applicant's agent as to the ability to adequately screen mechanical equipment; life/safety issues; and the increase to the overall mass and scale of the building. A total of 66.7% of the parcel is reserved in open space which meets the 25% requirement. Further the parking and other related features and amenities appear to conform to the Town Code.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

B. Freshwater Wetlands Identified.

All freshwater wetlands within the project area have been identified on any maps submitted as part of

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the application, regardless of the size of these wetlands.

Findings: Wetlands have been identified and shown on all applicable plans.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

C. River, Stream or Brook Identified.

Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.

Findings: A stream has been identified and shown on all applicable plans.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

D. Water Supply Sufficient.

The proposed development has sufficient water available for the reasonably foreseeable needs of the development.

{and}

E. Municipal Water Supply Available.

The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.

Findings: The site is serviced by public water. Kittery Water District has found there is sufficient capacity for the proposed development.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

F. Sewage Disposal Adequate.

The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.

Findings: The site is serviced by public sewer. Kittery Wastewater Treatment Department has found there is sufficient capacity for the proposed development.

Conclusions: The requirement appears to be met.

Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining	
G. Municipal Solid Waste Disposal Available.	
<i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>	
<u>Findings:</u> The site will contract for commercial solid waste pick up.	
<u>Conclusions:</u> The requirement appears to be met.	
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining	
H. Water Body Quality and Shoreline Protected.	
<i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>	
<u>Findings:</u> The proposed development is outside required setbacks and does not adversely affect the adjacent wetlands and stream. An application for a permit by rule has been submitted to MDEP.	
<u>Conclusions:</u> The requirement appears to be met.	
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining	
I. Groundwater Protected.	
<i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>	
<u>Findings:</u> The proposed development adheres to MDEP BMPs for erosion control that pertain to stormwater management.	
<u>Conclusions:</u> The requirement appears to be met.	
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining	
J. Flood Areas Identified and Development Conditioned.	
<i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>	

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Findings: A portion of the site is located within the 100 year flood plain, however, the proposed development is located at a considerable distance from the flood boundary and the basement floor elevations for the proposed buildings are 10 feet plus above the approximate flood elevation.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

K. Stormwater Managed.

The proposed development will provide for adequate stormwater management.

Findings:

The Applicant has provided a stormwater management and erosion control report, which limits post-construction stormwater flows to levels below pre-construction levels. (The project will result in significantly less impervious area than now exists at the site.)

The stormwater management system appears to meet the nominal requirements in the LUDC, and reduce the runoff from existing conditions. Detailed review by MDEP will be limited to Permit by Rule, because the project will reduce impervious area and pollutant loading.

Conclusions: With condition #5 the requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

L. Erosion Controlled.

The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

Findings: The site is stabilized both during and after construction using MDEP best management practices.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

M. Traffic Managed.

The proposed development will:

- 1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and*
- 2. Provide adequate traffic circulation, both on-site and off-site.*

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Findings: While the traffic analysis submitted by the applicant addressed the hotel only and the future further development of the site will likely require additional traffic analysis, the applicant has demonstrated a decrease in traffic, in comparison to the existing retail space.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

N. Water and Air Pollution Minimized.

The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

1. *Elevation of the land above sea level and its relation to the floodplains;*
2. *Nature of soils and sub-soils and their ability to adequately support waste disposal;*
3. *Slope of the land and its effect on effluents;*
4. *Availability of streams for disposal of effluents;*
5. *Applicable state and local health and water resource rules and regulations; and*
6. *Safe transportation, disposal and storage of hazardous materials.*

Findings: The proposed development adheres to MDEP BMPs for erosion control that pertain to stormwater management. Hazardous materials do not pertain to the proposed development.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Findings: The site has been developed since 1969 and there is no indication that there are aesthetic, cultural or natural resources that will be impacted by the development.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

Developer is financially and technically capable to meet the standards of this section.

Findings: The developer has been involved with many large scale construction projects through completion.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

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NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and, based on these Findings, determines that the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

1. 16.10.5.2.B.2 Plan Scale (s)
2. 16.10.5.2.C.6 Erosion and Sedimentation Control Plan Reviewed by York County Soil and Water Conservation District or Town's Engineering Consultant

Conditions of Approval (to be included on the final plan):

1. No changes, erasures, modifications, or revisions may be made to any Planning Board-approved final plan (Title 16.10.9.1.2).
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. All future development on the remaining lot requires Planning Board approval.
5. The stormwater management design will incorporate MDEP BMP's and LID's and a revised plan reviewed by Staff and Peer-review Engineer prior to signing of Mylar.
6. All Notices to Applicant contained in the Findings of Fact (dated: August 20, 2015).
7. The existing vegetated area within the Route 1 right of way will be planted with additional trees if MaineDOT provides permission. In the event the permission is not obtained the 30 foot wide reserve buffer area must be planted prior to the proposed development's completion.

Conditions of Approval (NOT to be included on the final plan):

8. Revise plan to show connectivity to adjacent property and bicycle racks.
9. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation on final Mylar.

Notices to Applicant (NOT to be included on the final plan):

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. The owner and/or developer, in an amount and form acceptable to the Town Manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.

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5. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

The Planning Board authorizes the Planning Board Chairperson to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 5 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON August 20, 2015

Per Title 16.6.2.A – An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 2 – Fernald Road Multi-Family Subdivision – Cluster Subdivision Final Plan Review

Action: approve or deny plan. Owner and applicant Peter J. Paul, Trustee of AMP Realty Holdings, LLC, requests consideration of plans to develop a multi-family residential cluster subdivision consisting of three duplexes and a triplex. The approximately 18-acre parcel is located on Tax Map 28, Lot 14 with frontage along Fernald Road in the Residential – Suburban (R-S) Zone with portions in the Commercial – 2 (C-2) and Resource Protection Overlay (OZ-RP) Zones. Agent is Tom Harmon, Civil Consultants.

Tom Harmon of Civil Consultants came to the podium to comment on the following points:

- They have turned in a final, or close to final, set of plans
- They are in agreement with the draft findings of fact that Mr. DiMatteo has prepared
- They still need to sit down with Mr. DiMatteo to figure out how they can put the setback conditions on the plan

Ms. Driscoll-Davis asked if the applicant was okay with the staff review. Mr. DiMatteo noted that the applicant had stated that they concurred with the staff review. Mr. DiMatteo commented that the Homeowners Docs make it clear that there is no access to the land trust property from the development but it is not in the conditions of approval. Ms. Kalmar commented that it must be in the conditions of approval that that particular detail cannot be changed in the Homeowner Docs.

Earldean Wells asked who is responsible for the maintenance of leach fields which drain into the wetlands. Mr. DiMatteo responded that according to the bylaws, certain funds are set aside for that maintenance. Ms. Wells then asked about snow removal and snow storage plans. Mr. Harmon responded that the snow will be put in the cul-de-sac, which is the only place that they can put it. Ms. Grinnell asked if there were trees in the cul-de-sac and Mr. Harmon said there are very few trees and the cul-de-sac was left as open place for recreation.

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Ms. Kalmar Move to grant conditional approval for the Final Subdivision Plan application, Morgan Court A Multifamily Residential Cluster Development, formerly known as Bartlett Development Hill, located at Fernald Road in the vicinity of Route 236 (Tax Map 28 Lot 14) in the Residential Suburban zone with portions of the site in the C-2 and Shoreland Overlay zones, for owner/applicant AMP Realty Holdings, LLC.

Ms. Driscoll-Davis seconded.

Motion carried: 5-0-0.

FINDINGS OF FACT

For “Morgan Court” Cluster Residential Subdivision Review

{As presented in the plan review notes dated 8/20/2015 and amended by the Board}

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: AMP Realty Holdings, LLC, owner and applicant requested approval for a cluster residential subdivision consisting of four lots with three duplexes and one triplex at Fernald Road and Route 236 on 17.97 acres (Tax Map 28, Lot 14) in the Residential – Suburban (R-S), Commercial -2 (C-2), and Resource Protection Overlay (OZ-RP) Zones,

Hereinafter the “Development,”

And pursuant to the Plan Review meetings conducted by the Planning Board as noted ;*{in the Plan Review Notes prepared for 8/20/2015}*

Sketch Plan Review	Approved	8/8/2013
Site Visit	Held	8/8/2013
Preliminary Plan Review	Held, Accepted	10/10/2013
Public Hearing	Held	11/14/2013
Preliminary Plan Review	Held, Continued...	11/14/2013

Note: The original plan application was continued not to exceed 90 days from 11/14/2013. More than 90 days passed without further submissions or review; The plan was resubmitted and accepted by the Board and preliminary review began again in 2015.

Preliminary Plan Review	Held, Accepted	4/9/2015
Site Walk	Held	5/6/2015
Public Hearing	Held	5/14/2015
Preliminary Plan Review	Held, approved with conditions	5/14/2015
Final Plan Review	Held, approved with conditions	8/20/2015

And pursuant to the application, plans and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following ;*{ as noted in the Plan Review Notes prepared for 8/20/2015}* (hereinafter the “Plan”):

1. Cluster Development Plan Review Application, March 26, 2015
2. Stormwater Management Plan, June 2015
3. B1 – Boundary and Existing Conditions, April 8, 2013
4. S1 – Final Subdivision Plan Clustered Multifamily Development, September 12, 2013 rev 6/22/15

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5. C1 – Existing Conditions Plan, September 12, 2013 rev 6/22/15
6. C2 – Overall Multifamily Site Plan, September 12, 2013 rev 6/22/15
7. C3 – Layout & Landscape Plan, September 12, 2013 rev 7/24/15
8. C4 – Erosion Control Plan, September 12, 2013 rev 6/22/15
9. C5 – Utility Plan, September 12, 2013 rev 6/22/15
10. C6 – Grading & Drainage Plan, September 12, 2013 rev 6/22/15
11. C7 – Sections, September 12, 2013 rev 6/22/15
12. R1 – Roadway Plan and Profile, September 12, 2013 rev 6/22/15
13. R2 – Construction Details, September 12, 2013 rev 6/22/15
14. R3 – Maintenance Notes, September 12, 2013 rev 6/22/15

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by section **16.10.8.3.4** and as recorded below:

FINDINGS OF FACT

Action by the Planning Board must be based upon findings of fact which certify or waive compliance with all the required standards of this Code, and which certify the development meets the following requirements:

A. Development Conforms to Local Ordinances.

The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.

Findings: The site consists of 17.97 acres, predominantly in the Residential – Suburban Zone with a small portion in the Commercial – 2 Zone. A cluster residential development is a permitted use in the Suburban Zone. The proposal is three duplexes and one triplex on four lots. These four lots total 35,210 square feet. A total of 709, 299 square feet (including both common reserved open space) is proposed. The state's minimum lot size law (12 MRSA § 4807) requires a minimum 20,000 s.f. lot size per 300 gallons per day with a portion of the lot area allowed to be reserved in open space. A total of 90.6% of the parcel is reserved in open space which accommodates lot size requirements.

Conclusions: The proposed development conforms to local ordinances.

Vote of 5 in favor 0 against 0 abstaining

B. Freshwater Wetlands Identified.

All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

Findings:

Wetlands have been identified and shown all applicable plans.

Conclusions:

The requirement appears to be met

Vote of 5 in favor 0 against 0 abstaining

C. River, Stream or Brook Identified.

Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.

Findings:

A stream has been identified and shown all applicable plans.

Conclusions:

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The requirement appears to be met
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
D. Water Supply Sufficient.
<i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
E. Municipal Water Supply Available.
<i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
<u>Findings:</u> The site will be serviced by public water via an easement across abutting commercial lots on Route 236. . Kittery Water District has found there is sufficient capacity for the proposed development.
<u>Conclusions:</u> The requirement appears to be met
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
F. Sewage Disposal Adequate.
<i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
<u>Findings:</u> The proposal is three duplexes and one triplex on four lots. These four lots total 35,210 square feet. A total of 709, 299 square feet (including both common reserved open space) is proposed. The state's minimum lot size law (12 MRSA § 4807) requires a minimum 20,000 s.f. lot size per 300 gallons per day (gpd) with a portion of the lot area allowed to be reserved in open space. Multifamily units are calculated with 120 gpd per bedroom. 22 bedrooms proposed in submitted HHE-200 application requires 176,000 s.f. in lot size, and in this instance 140,790 s.f. must be reserved in open space.
<u>Conclusions:</u> A total 709,299 s.f. is reserved in open space which accommodates the lot size requirement whereby the requirement appears to be met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
G. Municipal Solid Waste Disposal Available.
<i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
<u>Findings:</u> Applicant states the Homeowners Association will contract for solid waste pick-up.
<u>Conclusions:</u> With the inclusion of condition #7, the requirement appears to be met.
Vote of <u>5</u> in favor <u>0</u> against <u>0</u> abstaining
H. Water Body Quality and Shoreline Protected.
<i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
<u>Findings:</u> The proposed development is outside required setbacks and does not adversely affect the adjacent wetlands and stream

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Conclusions:

The requirement appears to be met

Vote of 5 in favor 0 against 0 abstaining

I. Groundwater Protected.

The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

Findings:

The proposed development adheres to the state plumbing code and MDEP BMPs for erosion control that pertain to sewage disposal and stormwater management.

Conclusions:

The requirement appears to be met

Vote of 5 in favor 0 against 0 abstaining

J. Flood Areas Identified and Development Conditioned.

All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.

Findings:

A portion of the site is located within the 100 year flood plain, however, the proposed development is located at a considerable distance from the flood boundary and the basement floor elevations for the proposed buildings are 10 feet plus above the approximate flood elevation.

Conclusions:

The requirement appears to be met

Vote of 5 in favor 0 against 0 abstaining

K. Stormwater Managed.

The proposed development will provide for adequate stormwater management.

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Findings:

The applicant has provided a stormwater management plan resulting in adequate stormwater management.

This consists of combining a closed drainage system comprised of catch basins and closed piping with roadside swales and level spreader outlets to restore sheet flow. The applicant is also submitting a Permit By Rule to Maine Department of Environmental Services.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

L. Erosion Controlled.

The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

Findings:

The site is stabilized both during and after construction using MDEP best management practices.

Conclusions: The requirement appears to be met.

Vote of 5 in favor 0 against 0 abstaining

M. Traffic Managed.

The proposed development will:

- 1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and*
- 2. Provide adequate traffic circulation, both on-site and off-site.*

Findings:

It is not anticipated the proposed development's increase in vehicle trips to Fernald Road/Rt. 236 will have an adverse impact and the site design allows for safe and adequate circulation with consideration of condition #7.

Conclusions:

The requirement appears to be met

Vote of 5 in favor 0 against 0 abstaining

N. Water and Air Pollution Minimized.

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The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:

- 1. Elevation of the land above sea level and its relation to the floodplains;*
- 2. Nature of soils and sub-soils and their ability to adequately support waste disposal;*
- 3. Slope of the land and its effect on effluents;*
- 4. Availability of streams for disposal of effluents;*
- 5. Applicable state and local health and water resource rules and regulations; and*
- 6. Safe transportation, disposal and storage of hazardous materials.*

Findings:

The proposed development adheres to the state plumbing code and MDEP BMPs for erosion control that pertain to sewage disposal and stormwater management. Hazardous materials do not pertain to the proposed development.

Conclusions:

The requirement appears to be met

Vote of 5 in favor 0 against 0 abstaining

O. Aesthetic, Cultural and Natural Values Protected.

The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

Findings:

Maine Historic Preservation Commission and the Maine Department of Inland Fish and Wildlife has no objection the proposed development nor is the site designated as a scenic resource. Potential impacts to the adjacent Remick Preserve are minimized and mitigated through, proposed signage, a no-cut/no-disturb buffer and on-street parking in condition #5

Conclusions:

The requirement appears to be met

Vote of 5 in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

Developer is financially and technically capable to meet the standards of this section.

Findings:

Per 16.8.11.8 Pre-Development Requirements and 16.10.8.2.2 Performance Guaranty Conditions, the applicant is required to file with the Town a performance guaranty and inspection escrow for improvements that will be utilized in common use or by the general public.

Conclusions:

The requirement appears to be met

Vote of 5 in favor 0 against 0 abstaining

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and, based on these Findings, determines that the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

1. 16.10.5.2.B.2 Plan Scale (s)
3. 16.10.5.2.C.6 Erosion and Sedimentation Control Plan Reviewed by York County Soil and Water Conservation District or Town's Engineering Consultant

Conditions of Approval (to be included on the final plan):

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1. No changes, erasures, modifications, or revisions may be made to any Planning Board-approved final plan (Title 16.10.9.1.2).
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. Per Title 16.8.8.2 Post Construction Stormwater Management and the MDEP General Permit for Small MS-4 the applicant and/or the Homeowners Association is responsible for the establishment and execution of: a) Maintenance Agreement for Stormwater Management Facilities; and b) Annual Stormwater Management Facilities Certification.
5. The construction of three paved on-street parking spaces with associated drainage measures in the vicinity of the Kittery Land Trust's easement on Fernald Road to the satisfaction of Staff and Commissioner of Public Works.
6. There is to be no access from the development to the abutting land trust property located to the southerly boundary of subdivision except along Fernald Road where an easement exists.
7. All Notices to Applicant contained in the Findings of Fact (dated: August 20, 2015).

Conditions of Approval (NOT to be included on the final plan):

8. Revise draft Homeowners Association by-laws and declarations as recommended by Staff and the Town Attorney and as presented at the 8/20/15 meeting.
9. Prepare draft proposed easements and submit to staff prior to the issuance of a building permit. Revise final plan to show an easement for the shared driveway proposed for lots 1 and 2.
10. Add a plan note on Sheet C-5 that reads: *All proposed lighting must conform to 16.8.24 and conformance demonstrated with the submittal of lighting specifications prior to the issuance of a building permit.*
11. Incorporate any plan revisions on the final plan as recommended by Planning Board, and outlined in item 8 in the 8/20/15 Plan Review Notes, and submit for Staff review prior to presentation on final Mylar.

Notices to Applicant (NOT to be included on the final plan):

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. One (1) mylar copy and one (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. The owner and/or developer, in an amount and form acceptable to the Town Manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.

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5. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.
6. Where required the applicant must provide to the Town a performance guaranty and an inspection escrow to cover the construction of all improvements that will be utilized in common use or by the general public.

The Planning Board authorizes the Planning Board Chairperson to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 5 in favor 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON August 20, 2015

Per Title 16.6.2.A – An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 3 – Good To-Go, 484 US Route 1 – Shoreland Development Plan Review

Action: accept or deny plan application; approve or deny plan. Owner/applicant Cape House Management, LLC requests consideration of plans for a 1,400 square foot addition of production space and associated parking to an existing, non-conforming mixed-use structure containing a commercial kitchen. The 4.46-acre lot is located at 484 US Route 1 (Tax Map 67, Lot 9) in the Mixed Use (MU) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Ken Wood, Attar Engineering.

Nathan Amsden of Attar Engineering approached the podium with the applicants. Jennifer Scism, owner of Good To-Go gave a brief presentation which included the following points:

- The building was purchased in 2011 for a catering facility and changed the use with a commercial kitchen for food processing almost two years ago.
- The business cannot keep up with production demands in the 1800 sq. ft. space.

Mr. Amsden added the following points:

- The applicants did investigate other sites but could not find what they needed.
- They performed a survey to identify the wetlands and looked into the regulations and came up with a plan for a building parallel to the highway.
- The applicant did not like the proposed building because it had to be two stories to accommodate the slope of the land.
- Ms. Scism noted that they do not have the resources at this time to construct a two story building. They would like to add a non-conforming building to the non-conforming structure that exists now through a walkway.

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- A portion of the new building has to fall within the setback line. The existing building is completely within the setback. This plan reduces the fill and amount of cutting needed.
- The design is a best case scenario for a mixed use zone so that the applicants can remain in Kittery.

Ms. Kalmar asked if the applicants had looked at and are in agreement with the staff's comments. Mr. DiMatteo noted that they had been in concurrence with the revisions. Ms. Grinnell commented that she did not feel it necessary to have a public hearing or a site walk and asked if the Board agreed. The Board concurred.

Mr. Alesse moved to accept the plan application and grant conditional approval for the Shoreland Development Plan dated July 15 2015 for 484 Route One (Tax Map 67, Lot 9) in the Mixed Use and Shoreland Overlay Zones, for owner and applicant Cape House Management LLC.
Ms. Driscoll-Davis seconded.

Ms. Driscoll-Davis wished the applicants luck and commented on her approval of their business and success.

Motion carried: 5-0-0.

**FINDINGS OF FACT
For 484 US Route 1, Good-To-Go
Shoreland Development Plan Review**

WHEREAS: Owner/applicant Cape House Management, LLC requested approval for a 1,400 square foot addition of production space and associated parking to an existing, non-conforming mixed-use structure containing a commercial kitchen. The 4.46-acre lot is located at 484 US Route 1 (Tax Map 67, Lot 9) in the Mixed Use (MU) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Ken Wood, Attar Engineering.

hereinafter the "Development;" and

And pursuant to the Plan Review meetings conducted by the Planning Board as noted; *{in the Plan Review Notes prepared for 8/20/2015}*

Shoreland Project Plan Review	August 20, 2015
Site Walk	Not required
Public Hearing	Not required
Approval	August 20, 2015

And pursuant to the application, plans and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following ;*{ as noted in the Plan Review Notes prepared for 8/20/2015}* (hereinafter the "Plan");

1. Shoreland Overlay Zone Project Plan Review Application, July 16, 2015.
2. Boundary and Topographic Survey, Amsden Field Survey., June 15 2015.
3. Shoreland Development Plan; Attar Engineering, Inc, June 15 2015.
4. Site Details; Attar Engineering, Inc, June 15 2015.

NOW THEREFORE, based on the entire record before the Town Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Town Planning Board makes the following factual findings and conclusions:

FINDINGS OF FACT

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17. D Shoreland Overlay Zone

1.d The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...

Findings: Existing conditions of devegetated area appear to be approximately 2,832 s.f. (1.45%) as measured using the Town's GIS website. With the proposed development the resulting devegetated area is approximately totals 21,566 square feet or 11% of the 194277.6-square-foot lot.

Conclusion: With condition # ___ this standard appears to have been met.

Vote: 5 in favor 0 against 0 abstaining

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

Article III Nonconformance

16.7.3.1 Prohibitions and Allowances

A. Except as otherwise provided in this Article, a nonconforming condition must not be permitted to become more nonconforming.

Findings: This is an existing, conforming lot with an existing single family dwelling structure that is nonconforming to the front and side yard setbacks. A dwelling is a special exception use in the Kittery Point Village Shoreland Overlay Zone.

The proposed development does not increase nonconformity.

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.5 Types of Nonconformance

16.7.3.5.5 Nonconforming Structure Repair and/or Expansion

A. A nonconforming structure may be repaired or maintained and may be expanded in conformity with the dimensional requirements, such as setback, height, etc., as contained in this Code. If the proposed expansion of a nonconforming structure cannot meet the dimensional requirements of this Code, the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) will review such expansion application and may approve proposed changes provided the changes are no more nonconforming than the existing condition and the Board of Appeals or the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) makes its decision per section 16.6.6.2.

See 16.6.6.1 and its reference to 16.6.6.2 below.

Finding: The proposed changes are no more nonconforming than the existing condition.

Conclusion: The requirement appears to be met

Vote: 5 in favor 0 against 0 abstaining

16.6.6 Basis for Decision

16.6.6.1.B In hearing appeals/requests under this Section, the Board of Appeals [note: Planning Board is also subject to this section per 16.7.3.5.5 above] must use the following criteria as the basis of a decision:

1. Proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;
2. Use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones;
3. Safety, the health, and the welfare of the Town will not be adversely affected by the proposed use or its location; and
4. Use will be in harmony with and promote the general purposes and intent of this Code.

The Board must also give consideration to the factors listed in 16.6.6.2.

Finding: The proposed development does not pose a concern.

Conclusion: The requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones

16.7.3.6.1 Nonconforming Structure Expansion

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs [A through C] below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section 16.7.3.6.1.A and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, enlarged or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.2 – Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.5.3, above, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

Finding: The existing structure is nonconforming, but is located outside the required setback from the

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normal high water line. The proposal does not increase nonconformity.

Conclusion: Standards A-C are not applicable.

Vote: 5 in favor 0 against 0 abstaining

Chapter 10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article 10 Shoreland Development Review

16.10.10.2 Procedure for Administering Permits

D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated the proposed use will:

1. Maintain safe and healthful conditions;

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

2. Not result in water pollution, erosion or sedimentation to surface waters;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters.

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2, and #3, this requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

3. Adequately provide for the disposal of all wastewater;

Finding: The development is connected to town sewer.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

4. Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;

Finding: Maine DEP Best Management practices will be followed for erosion and sedimentation control during site preparation and building construction. (see conditions #2 and #3) to avoid impact on adjacent surface waters. These conditions should be added to the plan.

Conclusion: The proposed development does not appear to have an adverse impact. With the suggested conditions #2 and #3, this standard appears to be met.

Vote: 5 in favor 0 against 0 abstaining

5. Conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;

Finding: Shore cover is conserved in accordance with this Code. There are no points of access.

Conclusion: With the proposed conditions #7 and #8, this requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

6. Protect archaeological and historic resources;

Finding: There does not appear to be any resources impacted.

Conclusion: The proposed development does not appear to have an adverse impact. This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

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1. Not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;

Finding: The proposed development does not appear to have an adverse impact.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

2. Avoid problems associated with floodplain development and use;

Finding: The proposed development is not within the floodplain.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

3. Is in conformance with the provisions of this Code;

Finding: The proposed development appears to be in conformance with the provisions of this Code.

Conclusion: This requirement appears to be met.

Vote: 5 in favor 0 against 0 abstaining

4. Be recorded with the York County Registry of Deeds.

Conclusion: As stated in the Notices to Applicant contained herein, Shoreland Development plans must be recorded with the York County Registry of Deeds prior to the issuance of a building permit.

Vote: 5 in favor 0 against 0 abstaining

Based on the foregoing Findings, the Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, the Planning Board approves the Shoreland Development Plan Application of Cape House Management, LLC, owner and applicant, to construct a 1,400 square foot addition of production space and associated parking to an existing, non-conforming mixed-use structure containing a commercial kitchen, located on a 4.46-acre lot at 484 US Route 1 (Tax Map 67, Lot 9) in the Mixed Use (MU) and Shoreland Overlay (OZ-SL-250') Zones and subject to any conditions or waivers, as follows:

Waivers: None

Conditions of Approval (to be included on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. All Notices to Applicant contained herein (Findings of Fact dated 8/20/15).

Conditions of Approval (not to be included on final plan):

5. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation on final Mylar.

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The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 5 in favor 0 against 0 abstaining

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Notices to Applicant:

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) mylar copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, a mylar copy of the signed original must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.

ITEM 4 – Rockwell Homes, 89 Route 236 – Preliminary Site Plan Completeness Review

Action: accept or deny plan application; schedule a public hearing. Owner/applicant Rockwell Homes, LLC request consideration of plans for a single, 2,520-square-foot building containing business offices and a showroom and a drive-through-only restaurant at 89 Route 236 (Tax Map 28, Lot 14-2) in the Commercial 2 (C-2) Zone. Agent is Ryan McCarthy, Tidewater Engineering & Surveying, LLC.

Ryan McCarthy of Tidewater Engineering & Surveying, LLC approached the podium to present the following points:

- The proposed application is for a multi-use building
- A portion of the building will be for an Aroma Joes drive through restaurant and the rest of the building will be three office units, the largest of which will be for Rockwell Homes.
- The building will be New England style with a hip roof and a cupola.
- There will be a one way loop around the building, the left hand side of which is for the drive through lane. There will be no external intercom system for the drive through, seven visitor parking spaces and nine additional parking spaces for employees for a total of sixteen parking

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spaces including one handicap space. Aroma Joes will have three parking spaces for their employees and each of the other three units will get two parking spaces each, totaling sixteen parking spaces altogether.

- There will be a common space in the form of a large foyer in the building and other shared walkways and common areas. Instead of calculating the parking spaces on overall square footage of the building, which would include the shared spaces, they are calculating parking spaces on the square footage of the individual businesses.
- There is a public water main on the opposite side of Route 236 and it will go under the road with shared costs by nearby landowners. There will be no municipal sewer as they will have an onsite septic system and they will also have natural gas. The electric and communication wires will go underground as well.
- They have included a storm water report in the application. They limited the runoff from the proposed site to the predevelopment conditions when the site was fully wooded. They have added a storm water basin with controlled overflow.
- Public Works does not have jurisdiction because they are outside of the urban compact zone.
- They have submitted a copy of the application to the police and fire departments.
- There are a few remaining items to be submitted including: proposed sign details, landscape plan, traffic report and lighting plan.
- For the traffic report, they are expecting 130 peak trips and will require a traffic movement permit from the MaineDOT.

Ms. Grinnell asked if the Board felt that the application was complete and, if so, recommended that they schedule a site walk and public hearing. She added that she felt that the application was complete and she was ready to move forward with the scheduling. Mr. Alesse asked if a site walk is required and the response was that yes it is. Ms. Driscoll-Davis asked if there was a crosswalk going from the parking spaces to the building and Mr. DiMatteo suggested they discuss that at the next meeting. Ms. Kalmar noted that she felt that the application was complete as well and read a comment from Mr. Lincoln regarding heavy traffic volume on Route 236, especially during shift changes at the Shipyard.

Ms. Kalmar moved to accept the preliminary plan application dated July 21st, 2015 and schedule a public hearing for 89 Route 236 (Tax Map 28 Lot 14-2) located in the Commercial 2 (C-2) Zone for owner and application Rockwell Homes, LLC for September 10, 2015 and schedule a site walk for Thursday, September 3, 2015 at 7:30 a.m.

Mr. Harris seconded.

Motion carried: 5-0-0.

ITEM 5– Kolad Seawall Replacement–Shoreland Development Plan Review

Action: accept or deny plan application; approve or deny plan. Owner/applicant Jeffrey and Deborah Kolad requests consideration of plans for replacement of an existing seawall and the expansion of a waterfront shed. The 0.45-acre lot is located at 92 Whipple Road (Tax Map 10, Lot 19) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL-250') Zones. Agent is Barney Baker, Baker Design Consultants.

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Barney Baker of Baker Design Consultants approached the podium to give a short presentation which included the following points:

- The property is located in the back channel near the gate.
- The seawall is 130 feet long.
- There are two parts to the project: replacement of the seawall and expansion of the non-conforming building on the shorefront.
- They plan to replace the rubble seawall with a granite block wall.
- There is an original marine way on a section of the property and large trees as well.
- They plan to use granite blocks because they are easier and quicker to install. They also plan on removing the timbers from the marine railway.
- The lower wall extends on the same alignment as the Kolad wall.
- They want to create an opportunity for the owner to take his dinghies out of the water and launch kayaks. They are planning to use the marine railway area to launch boats but instead of a normal gradient it will have a step.
- The project is being reviewed by Army Corp. of Engineers and Maine DEP.
- Mr. Baker has spoken with Kelly Philbrook and suggested that this is a replacement in-kind and the project will be presented to the KPA to give them an opportunity to waive a KPA application.
- The 84 sq. ft. shed is used to support the dock and holds safety and other equipment. They would like to be able to hold more equipment in the shed so they would need to expand it 30%.
- They understand that the building cannot be made more nonconforming than it currently is. The building will increase to 108 sq. ft.
- Mr. Baker noted that he has reviewed the staff comments and reviewed them briefly, adding some of his comments. He noted that there is no change in the de-vegetated area with the exception for a small accounting for a waterfront stair.
- The 100 ft. setback is not changing and the high tide line comes right up to the wall.
- They have not received their DEP permit yet but the project manager has commented that they can remove the timber but they cannot change the gradient and they will comply with that. They have also asked that they only put in the higher wall and not the lower wall, however the lower wall is there to be a transition to the neighboring property and to match the gradient of the marine railway that is there now. They still need to resolve that with DEP.
- Mr. Baker commented that the person at DEP misinterpreted their intention for the building, thinking that they would remove the building and put in an entirely new one when, in fact, they do not plan to improve it more than 50% of its current value.
- Ms. Grinnell asked if they were planning on increasing a building in a Shoreland zone that is within a 100 ft. setback. Mr. Baker responded that they are not making it more nonconforming than it currently is. Mr. DiMatteo commented that they are increasing it by what is allowed in the ordinance which is 30%. He added that if their plans made it seem as though they were planning a full reconstruction which would put it over the 50% market value where the Board would then have to determine if the structure meets the 100 ft. setback.
- Ms. Grinnell asked how they were planning on renovating the structure and Mr. Baker responded that they were going to have to pick the building up and set it aside while they replace the wall and work on the remaining foundation then put it back and bump out the current structure.

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Ms. Grinnell commented that she felt the need for a site walk, a public hearing and have the Port Authority review the project. The Board debated a date and time when they could perform a site walk.

Ms. Kalmar moved to accept the plan application and schedule a site walk for Thursday, September 3, 2015 at 9:00 a.m. and a public hearing on Thursday, September 10, 2015 for the Shoreland Development Plan dated July 23, 2015 for 92 Whipple Road (Tax Map 10, Lot 19) in the Residential-Urban and Shoreland Overlay Zones for owner and applicant Jeffrey and Deborah Kolad.

Ms. Driscoll-Davis seconded.

Motion carried: 5-0-0.

ITEM 6– Kittery Point Yacht Yard Renovations –Shoreland Development Plan Review

Action: accept or deny plan application; approve or deny plan. Owner and applicant MGX, LLC a.k.a Kittery Point Yacht Yard, Corp. requests consideration of plans for replacement of an existing marine railway with an at-grade boat ramp requiring fill within the intertidal zone. The 1.3-acre lot is located at 48 Bowen Road (Tax Map 17, Lot 10) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL) and Commercial Fisheries/Maritime Activities (OZ-CMFU) Overlay Zones. Agent is Barney Baker, Baker Design Consultants.

Tom Allen, President and Owner of Kittery Point Yacht Yard/MGX, LLC approached the podium to introduce himself to the Board and provide the following about his company:

- The company has one location in Kittery and one in Eliot. The location in Eliot does not have a marina component but it is larger in terms of real estate.
- The property has been a boatyard since 1962. In its heyday, about 30 years ago, the location supported about 40 employees.
- There are, on average, five employees in Kittery with an administrative staff.

Barney Baker of Baker Design Consultants approached the podium to give a short presentation which included the following points:

- The project is in the entrance to the back channel.
- The projects exceeds the minimum requirements for impervious area for the zone.
- Boats are currently moored on a fixed pier.
- They have received a Boating Infrastructure Improvement Grant administered by the State.
- The grant would provide space for 15 additional transient boats.
- The existing marine railway served as a boatyard when it was a shipyard.
- There is not currently an efficient way to get boats out of the water; they have to piggyback the trailer onto the railway which is an extensive operation. They want to replace the current structure with a traditional boat ramp which would increase the tidal window.
- Boat ramps are steeper than marine railways; marine railways are designed for much heavier boats and they do not slope as much. They have put in a boat ramp that slopes more quickly and, as a result, have created additional upland area which is currently occupied by the marine railway. This is important because you start at the same place in deep water but get out of the water quicker so it creates more upland area.

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- They are putting the Boat Infrastructure Grants improvements on the upriver side and are keeping the yard operation areas on the downriver side.
- The project requires a permit from the Army Corp. (an application was sent for their signature yesterday). They also require a submerged lands lease and a DEP permit (which is in progress).
- They would like to finish the project before the federal grant expires in December 2016 and would like to get bids out for the work this fall.
- They are increasing their number of floats and increasing birthing spaces by 9.
- They would be impacting 3 moorings by expanding towards the property line and putting in pony docks, where two boats occupy the same space.
- They are requesting to put in fewer parking spaces than what is required by ordinance because they are required to have 58 spaces right now and would be required to have 67 spaces, if all transient boaters have parking spaces, which is not feasible or necessary. Transient boaters do not come with cars and should not require a parking space. The yard has bicycles that they allow people to use for transportation.
- Mr. Allen commented that he has owned the yard for 11 years and he has never experienced a parking issue on the property, even on peak nights.

Ms. Driscoll asked if the pony docks hold four boats or two boats. Mr. Baker responded that they are 28 ft. long and are designed to hold two boats.

Ms. Grinnell asked the Board if they want to schedule a site walk. They agreed to schedule a site walk and a public hearing. Mr. Baker added that the upland improvements are minimal and the only upland modification they are making on the site is that they are converting the winch house into showers and a restroom for the transient boaters. They are not changing the footprint of the building. Ms. Grinnell responded that they would still like to take a site walk and have a public hearing.

Ms. Driscoll-Davis asked if they would consider adding a pump out for boats since sewer is available in the area. Mr. Allen responded that he has on his list to contact Pam Parker about the possibility of a pump out facility since they are already recycling their water. He will look into potential grant money for that and added that they are a registered clean marina.

**Ms. Driscoll-Davis moved to accept the plan application and schedule a site walk on September 3, 2015 at 10:00 a.m. and schedule a public hearing on September 10, 2015 for the Shoreland Development Plan dated July 20, 2015 for 48 Bowen Road (Tax Ma 17, Lot 10) in the Residential-Urban (R-U) and Shoreland Overlay (OZ-SL) and Commercial Fisheries/Maritime Activities (OZ-CMFU) Overlay Zones for owner and applicant MGX, LLC a/k/a Kittery Point Yacht Yard, Corp. Ms. Kalmar seconded.
Motion carried: 5-0-0.**

ITEM 7– Board Member Items / Discussion

- A. Committee Updates – None.
B. Other – None.

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Mr. Alesse moved to adjourn.

Ms. Driscoll-Davis seconded.

Motion carried: 5-0-0

The Kittery Planning Board meeting of August 20, 2015 was adjourned at 9:43 p.m.

Submitted by Valerie Porrazzo, Minutes Recorder, August 28, 2015.